Supreme Court, U.S.
FILED

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No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

JEANETTE NELSON,

Petitioner,

v.

REHABILITATION ENTERPRISES OF NORTH EASTERN WYOMING, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the "cap on damages" provision contained in Section 102 of the *Civil Rights Act of 1991* (42 U.S.C. 1981a(b)(3)(B)), apply to the aggregate of all compensatory damages awarded on all *Title VII* claims, or does it apply to each distinct *Title VII* claim for which damages are awarded?

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OPINIONS BELOW

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit is unreported and appears in Appendix A at p. 1, *infra*.

The Judgment of the United States District Court for the District of Wyoming is also unreported and appears in Appendix B at p. 11, *infra*.

JURISDICTION

The Order and Judgment of the Tenth Circuit Court of Appeals was entered on the 21st day of August, 1997. There was no petition for rehearing.

This petition is being docketed in this Court within ninety days of the entry of the Order and Judgment of the United States Court of Appeals for the Tenth Circuit. The jurisdiction of this Court is involved pursuant to 28 USC §1254. The basis for federal jurisdiction in the first instance was 28 USC §1331, a civil action arising under the Constitution, laws, or treaties of the United States.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. §1981a(b)(3)(B) provides, in pertinent part, as follows:

> (3) *Limitations*. The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary

losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party . . .

(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000 . . .

STATEMENT OF THE CASE

Petitioner suffered hostile environment sexual harassment in her employment and was then terminated when she reported it. Petitioner sued her employer, Rehabilitation Enterprises of North Eastern Wyoming, Inc., (RENEW), for sexual harassment resulting in hostile environment **and**, as a separate cause of action, unlawful retaliatory discharge under Sections 703 and 704 of the *Civil Rights Act of 1964* (42 U.S.C. §2000e, *et seq.*). A trial was conducted in June, 1996, and the jury awarded petitioner $90,000 on her claim of hostile environment sexual harassment, and an additional $100,000 on her claim of unlawful retaliation.

After the verdict was returned, the District Court entered a Judgment which reduced the petitioner's aggregate award of $190,000 to $100,000, plus backpay of $39,000. In entering its order reducing the aggregate compensatory damages, the District Court found that the cap-on-damages statute limits damages "for each complaining party," not for "each claim." In applying 42 U.S.C. §1981a(b)(3)(B) the Court found that "general compensatory damages are capped at $100,000 for employers with

more than 100 but fewer than 201 employees. (Appendix B, p. 12, *infra.*)

On appeal the Tenth Circuit Court of Appeals reversed the award of backpay but affirmed reduction of compensatory damages, citing *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). The Court held that the language of 42 U.S.C. 1981a(b)(3) indicated the cap applies "for each complaining party," not to each claim, thus finding that the District Court properly applied the cap to the aggregate of damages awarded on both of Nelson's *Title VII* claims. (Appendix A, p. 9, *infra.*)

REASONS FOR ALLOWING THE WRIT

I.

THE PLAIN MEANING OF THE STATUTE SHOULD BE READ SO AS TO EFFECTUATE CONGRESSIONAL INTENT.

The *Civil Rights Act of 1991* allowed, for the first time, compensatory and punitive damages for intentional sex discrimination and retaliation. See 42 U.S.C. §1981a(a). However, the Act places limitations on the amount of compensatory and punitive damages that may be awarded. The question in this case is whether the limitations should be applied to the aggregate of all compensatory damages on all claims, or to each separate and distinct award for each distinct claim. The lower court's resolution of the question, requiring the limitations to be applied to the aggregate of all claims, is contrary to the plain meaning of the statute and Congressional intent. The Court should grant the Writ to answer this most

important question regarding application of a statute that affects thousands of claims under *Title VII* every year.

The petitioner brought two separate causes of action against the respondent, RENEW. First, she sought damages for hostile environment sexual harassment under Section 703 of the *Civil Rights Act of 1964,* (42 U.S.C. §2000e-2), and was awarded $90,000 in compenatory damages by the jury.

She also sought damages under a separate cause of action for unlawful retaliation for her opposition to the hostile environment sexual harassment under Section 704 of the *Civil Rights Act of 1964,* (42 U.S.C. §2000e-3), and was awarded $100,000 in backpay and compensatory damages. No punitive damages were awarded on either count.

The Tenth Circuit's reading of 42 U.S.C. 1981a(b)(3), affirming the District Court, however, resulted in the reduction of the verdict from an aggregated amount of $190,000 to $100,000. The Tenth Circuit relied upon *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) for the proposition that the words "shall not exceed for each complaining party . . . " in 42 U.S.C. 1981a(b)(3) mean that all damages awarded on separate and distinct causes of action should be aggregated before the cap-on-damages statute is applied to the aggregated amount. (Appendix A, p. 9.)

This interpretation of the cap-on-damages provision in the *1991 Civil Rights Act* purports to rely on the "plain meaning" rule. However, it is obvious that a single person may be a complaining party in both a Section 703 discrimination action and a separate and distinct Section

704 retaliation action under *Title VII* of the *1964 Civil Rights Act*, thereby being a "complaining party" in two matters resulting in separate and distinct damages on each count. Such result comports with the plain meaning of the statute.

Moreover, an interpretation which requires that damages awarded in separate and distinct claims be aggregated for purposes of the cap-on-damages statute, adds language that is not present in the statute. This is contrary to the "plain meaning rule." No where in the statute do the words "aggregated damages" appear. Courts must refrain from reading a phrase into a Federal Statute when Congress has left the phrase out. *Keene Corp. v. United States*, 508 U.S. ___, 124 L.Ed.2d 118, 113 S.Ct. 2035 (1993).

The lower court's decision focuses only on the words "for each complaining party," to reach the conclusion that damages should be aggregated. This is a limited review of the statute. Such a limited review of the plain meaning of a statute, when such review leads to an interpretation that skews the meaning of the statute as a whole, does not effectuate Congressional intent. In *Grandon v. U.S.*, 494 U.S. 152, 158 (1990), this Court said that "[i]n determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute and to its object and policy." This Court later stated that "[i]n expounding a statute, we must not be guided by a single sentence or member of sentence, but to the provisions of the whole law and to its object and policy." *United States Nat'l. Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439 (1993).

Furthermore, the meaning of statutory language, **plain or not,** depends on context. *King v. St. Vincent's Hospital,* 502 U.S. 215, 221 (1991). The "cap-on-damage" statute appears in Section 102 of the *Civil Rights Act of 1991,* which provides for compensatory damages for both sex discrimination **and** retaliation. The context of the statute clearly shows the plain meaning of the words "for each complaining party" to be that the cap is to apply to each award of damage for each claim brought by each complaining party.

Additionally, courts are to construe ameliorative statutes to effectuate their purposes. Courts are to abide by the " . . . familiar canon . . . that remedial legislation should be construed broadly to effectuate its purposes." *Tcherepin v. Knight,* 389 U.S. 332, 336 (1967).

II.

AGGREGATING DAMAGES DOES NOT SERVE THE CONGRESSIONAL INTENT OF THE *1991 CIVIL RIGHTS ACT* TO MAKE CIVIL RIGHTS CLAIMANTS WHOLE.

This Court should grant certiorari in this matter to determine whether aggregation of separate and distinct damage awards before the cap-on-damage statute is applied is in accord with Congressional intent.

In discerning Congressional intent it is permissible or even obligatory to review the legislative history of the enactment. Indeed, it is said that when there is some

uncertainty about the meaning of a statute, it is prudent to examine its legislative history. *Connecticut National Bank v. Germain*, 503 U.S. 249, 255 (1992), Justice Stevens, concurring. (See also *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 611, n. 4 (1991)).

Regarding the enactment of the cap-on-damages provisions in the *1991 Civil Rights Act*, Senator Danforth, the sponsor of the amended version of the original bill, which was eventually passed by the Congress, offered an *Interpretative Memorandum*, which was joined by Senator Kennedy and other co-sponsors, which spoke directly on the issue of whether caps apply to the combined aggregated amounts of compensatory damages on separate causes of action, or to each separate claim:

> In addition to the above cited restrictions, the following limitations also are placed on the damages available to **each individual complaining party for each cause of action brought under Section 1981A.**
>
> * * *
>
> It is the intention of the sponsors of this legislation to make the perpetrators of intentional discrimination liable for the discrimination up to the full extent of the stated limitation. (Emphasis supplied.)

137 *CONG. REC.* S 15484 (daily ed. Oct. 30, 1991) (*Interpretive Memorandum* of Senator Danforth).

In *North Haven Bd. of Education v. Bell*, 456 U.S. 512, 526-27 (1982), this Court noted that "[a]lthough the statements of one legislator made during debate may not be

controlling," the sponsors remarks concerning the language enacted are an authoritative guide to the statute's construction. *North Haven Bd. of Education, supra,* pp. 526-527. Here, Senator Danforth offered the amended version of the original bill that was eventually enacted. Thus, Santor Danforth's *Interpretive Memorandum* should be an authoritative guide in any construction of 42 U.S.C. § 1981a.

In the House debate, Representative Don Edwards said:

> Monetary damages serve the twin purposes of compensation and deterrence. Compensatory damages are necessary to make discrimination victims whole for the terrible injury to their careers, to their mental, physical, and emotional health, to their self-respect and dignity and for other consequential harms. Compensatory damages also raise the cost of an employer's engaging in intentional discrimination thereby providing employers with additional incentives to prevent intentional discrimination in the workplace before it happens.

137 *CONG. REC.* H 9626 (daily ed. Nov. 7, 1991).

Further, the House Education and Labor Committee, in its House Report No. 102-40(I) said:

> [M]aking employers liable for all losses – economic and otherwise – which are incurred as a consequence of prohibited discrimination and which are proved at trial, will serve as a deterrent to future acts of discrimination, both for those held liable for damages as well as the employer community as a whole.

From the legislative history of the *1991 Civil Rights Act*, it is clear that Congress intended to 1) make victims whole; and 2) to deter future violations. Aggregating separate claims with separate and distinct injuries before applying the cap-on-damages statute does not achieve these Congressional intentions. A victim that suffers two distinct and separate injuries (sexual harassment and retaliation) is not made whole when aggregation essentially eliminates damages awarded for an entire cause of action.

Furthermore, aggregation does not serve the purpose of deterrence when no matter how many causes of action under *Title VII* are proven at trial, the cap is always applied strictly to each claimant to the aggregate of all proven and awarded damages.

CONCLUSION

To date, there appears to be no other cases that have specifically addressed the question of whether the cap-on-damages language in 42 U.S.C. § 1981a applies to the aggregated damages awarded to each claimant for separate claims or to the separate damages on each cause of action.

This is a matter of wide national concern and interest and should be answered by the United States Supreme Court.

The Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JEANETTE NELSON, Plaintiff-Appellee, v. REHABILITATION ENTERPRISES OF NORTH EASTERN WYOMING; TERRY O'GORMAN, Defendants-Appellants.	)	No. 96-8102
JEANETTE NELSON, Plaintiff-Appellant, v. REHABILITATION ENTERPRISES OF NORTH EASTERN WYOMING; TERRY O'GORMAN, Defendants-Appellees.	)	No. 96-8105 (D.C. No. 95-CV-38) (D. Wyo.)

ORDER AND JUDGMENT*

(Filed Aug. 21, 1997)

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir.R. 36.3.

Before BALDOCK, BRORBY, and BRISCOE, Circuit Judges.

Defendant Rehabilitation Enterprises of North Eastern Wyoming (RENEW) appeals from a jury verdict and subsequent adjusted judgment in favor of plaintiff Jeanette Nelson, a former RENEW employee, on her claims under Title VII for retaliatory discharge and hostile work environment sexual harassment. Nelson cross-appeals the district court's reduction of the jury's damage award in accordance with the damages cap of 42 U.S.C. § 1981a(b)(3). We modify the judgment in part and affirm as modified.

I.

RENEW is a private nonprofit corporation which provides services to the disabled. RENEW hired Nelson in December 1992 as a part-time case manager in its rehabilitation department. As part of her duties, Nelson worked on a grant project with Terry O'Gorman, a supervisor and unit director in RENEW's production department. According to Nelson, O'Gorman made unwelcome sexual advances and remarks toward her during the course of their working relationship. Nelson reported the harassment to Elbert Belish, her immediate supervisor, who eventually reported the harassment to upper management. Based upon the reports, Larry Samson, who was president of RENEW, met with O'Gorman, Belish, and Nelson on separate occasions to discuss the accusations. No disciplinary action was taken against O'Gorman and

no further sexual harassment was committed by O'Gorman following these meetings.

In separate but related events, Nelson developed a friendship with Kyle Dittmer, a temporary production worker hired by O'Gorman. Nelson provided rides to Dittmer to and from work and to and from counseling sessions and the two shared personal problems. In addition, Nelson at times engaged in sexual banter with Dittmer. Although Belish allegedly believed Nelson was providing case management services to Dittmer, Nelson did not view her relationship with Dittmer as part of her position at RENEW. Dittmer eventually ended the relationship and informed O'Gorman that Nelson had been sexually harassing him. O'Gorman reported Dittmer's complaint to upper management and Jim Stewart, the human resources manager, was assigned to investigate. Samson met with Nelson after Stewart had completed his investigation and decided to discharge Nelson.

Nelson filed this action against RENEW and O'Gorman. The jury awarded Nelson $90,000 on her sexual harassment claim and $100,000 on her retaliatory discharge claim. The jury rejected Nelson's claim against O'Gorman for intentional infliction of emotional distress. After apportioning the jury's retaliatory discharge award into backpay and other components, and after applying the damages cap set forth in 42 U.S.C. § 1981a(b)(3)(B), the district court entered judgment in favor of Nelson in the amount of $139,000.00. In a separate order, the court also awarded attorney fees and costs to Nelson as a "prevailing party" under 42 U.S.C. § 2000e-5(k).

II.

A. RENEW's Appeal

1. *Sufficiency of evidence to support verdict on retaliatory discharge claim*

RENEW argues the district court erred in denying its motion for judgment as a matter of law on Nelson's retaliatory discharge claim. Although RENEW does not challenge Nelson's ability to establish a prima facie case of retaliation, it contends Nelson presented insufficient evidence of pretext to rebut RENEW's proffered non-retaliatory reason for dismissing her and, accordingly, the evidence was insufficient to support the jury's verdict in favor of Nelson.

We review de novo the district court's denial of a motion for judgment as a matter of law, applying the same standard as the district court. *Mason v. Oklahoma Turnpike Authority*, 115 F.3d 1442, 1450 (10th Cir. 1997); *Considine v. Newspaper Agency Corp.*, 43 F.3d 1349, 1363 (10th Cir. 1994). "Under this standard, judgment as a matter of law is warranted only if the evidence points but one way and is susceptible to no reasonable inferences supporting the party opposing the motion." *Mason*, 115 F.3d at 1450. In conducting our review, "we can neither assess the credibility of witnesses nor substitute our judgment for that of the jury." *Considine*, 43 F.3d at 1363. "Instead, we must view the evidence most favorably to [ ] the party against whom the Rule 50 motion was made, and give [that party] the benefit of all reasonable inferences from the evidence." *Id.*

Although it is a close question whether Nelson provided a basis for the jury to disbelieve RENEW's proffered reasons for discharge, we ultimately conclude she did. It was uncontroverted that when Samson met with Nelson to discuss Dittmer's accusations, he was armed with a memorandum from Stewart listing allegations culled from a tape recording of a conversation between Nelson and Dittmer. Stewart stated in the memorandum to Samson that "the fact that you present this type of detail may deter her from further action." Append. II at 74. Although RENEW's witnesses explained this ambiguous statement alluded to deterring further sexual harassment by Nelson, we believe it possible that the jury could interpret the statement as referring to Nelson's complaints against O'Gorman and any potential legal action she may have contemplated filing as a result of those complaints. The jury could also arguably have inferred retaliation from the fact that Nelson and O'Gorman, though similarly situated as accused sexual harassers, were treated differently by RENEW. *See Murray v. City of Sapulpa*, 45 F.3d 1417, 1422 (10th Cir. 1995) (differential treatment leading to discharge of only one of similarly situated employees may establish improper motive). Finally, the record contains ample evidence that, contrary to the testimony of RENEW's witnesses, Dittmer was only an employee of RENEW and not Nelson's client. In light of this evidence, the jury could have concluded RENEW was attempting to redefine a personal non-working relationship between Nelson and Dittmer as one involving workplace sexual harassment in order to discharge Nelson. Such a conclusion is not implausible when one considers the key piece of evidence purportedly

relied upon by RENEW in suspending and discharging Nelson, i.e., a tape recorded conversation between Dittmer and Nelson which was admittedly made after hours and away from work. These inferences, bolstered by the close temporal proximity of Nelson's discharge (December 21, 1993) to her complaint against O'Gorman (first described to Belish on November 11, 1993; Samson met with Nelson on December 3, 1993) arguably support a suspicion of mendacity. For these reasons, we conclude the district court did not err in denying RENEW's motion for judgment as a matter of law with respect to Nelson's retaliatory discharge claim. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511 (1993) (factfinder's disbelief of defendant's proffered reason for discharge, together with elements of the prima facie case, suffice to show intentional discrimination).

2. *Amount of backpay in jury's compensatory damage award on retaliatory discharge claim*

Although Nelson sought an award of backpay in connection with her retaliatory discharge claim and the jury was instructed on backpay, the verdict form did not ask for a specific determination of the amount of backpay damages. Instead, the verdict form asked the jury to make a general determination of damages Nelson had suffered in connection with her retaliatory discharge claim, which under the court's instructions could have included backpay, front pay, emotional pain and suffering, and loss of enjoyment of life. *See* Append. I at 120 (verdict form asks jury to determine "what amount of damages, if any, will adequately compensate Nelson for

her retaliatory discharge claim"). In response to this question, the jury awarded Nelson $100,000 in damages. After trial, at the urging of Nelson and over RENEW's objection, the court concluded Nelson was entitled to two years of backpay at an annual salary of $19,500. Specifically, the court concluded "Nelson asked for backpay, and the jury was instructed on backpay," and "Nelson's evidence supports a jury finding that Nelson is entitled to two years of backpay at an annual salary of $19,500." Append. I at 149. Accordingly, the court found "the jury awarded Nelson a total of $39,000 in backpay." *Id.* Although the court's finding is not entirely clear, we presume it intended to provide that the $100,000 damage award on Nelson's retaliatory discharge claim included an intended award of $39,000 for backpay.

On appeal, RENEW challenges the district court's decision to award $39,000 in backpay after concluding the jury had made such an award. In particular, RENEW argues the court could not properly enter judgment on a backpay award because there is no way to determine whether the jury awarded any backpay damages.

Because the district court's apportionment of the damage award occurred in the context of applying the 42 U.S.C. § 1981a(b)(3) damages cap, we construe RENEW's argument as a challenge to the court's application of the damages cap. Although we have found no cases indicating what standard of review to apply in such a case, *see Jonasson v. Lutheran Child and Family Services*, 115 F.3d 436, 441 (7th Cir. 1997) (affirming application of damages cap without stating applicable standard of review), we find it unnecessary to decide the controlling standard of review. Under any conceivable standard of review, it is clear the

court erred in finding the jury's $100,000 damage award included $39,000 for backpay. At trial, the jury was instructed it could award damages for backpay (as well as other types of damages), but it was also instructed that Nelson had a duty to mitigate her damages. In light of these instructions, and in light of the conflicting evidence concerning whether Nelson was capable of working after her termination and whether she made reasonable attempts to find work after her termination, the jury could have reached a variety of conclusions with respect to the issue of backpay (e.g., Nelson was entitled to full backpay for the twenty-nine months between her termination and trial; partial backpay; no backpay). As the court realized after trial, the verdict form should have asked the jury to separate the damage components to allow easy and effective application of the damages cap. Because the court did not do so and neither party objected to the verdict form, *see Kenworthy v. Conoco, Inc.*, 979 F.2d 1462, 1468 (10th Cir. 1992) (party may not take advantage of ambiguities created by jury instructions or verdict form if party did not point out ambiguities to court prior to submission to jury), we conclude the court should have treated the entire award as compensatory damages subject to the damages cap. It would arguably have been appropriate for the court to apportion the general award only if the evidence concerning Nelson's entitlement to backpay, as well as the amount of the backpay, had been uncontroverted.[1] Accordingly, we

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[1] We do not conclusively decide whether such action on the part of a district court would be appropriate. We do emphasize, however, that this situation can be avoided entirely by use of a verdict form that asks the jury to make separate findings with respect to each damage component.

exercise our authority under 28 U.S.C. § 2106 to modify the judgment to allow only $100,000 in total damages.[2] *See Wilmer v. Board of County Com'rs of Leavenworth County*, 69 F.3d 406, 410 (10th Cir. 1995) (exercising inherent appellate authority under § 2106 to modify judgment directly in order to obviate purely ministerial remand).

B. Nelson's Cross-Appeal

1. *Application of damages cap to aggregate award of all claims*

In her cross-appeal, Nelson contends the district court erred in applying the damages cap. Specifically, Nelson argues the court erroneously applied the cap by aggregating her damages and limiting her to $100,000 for all of her Title VII claims. According to Nelson, the cap should be applied separately to each Title VII claim and she should be entitled to the full award of $190,000.

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[2] Because of our affirmance of the jury's verdict in Nelson's favor on her Title VII retaliatory discharge claim, combined with the fact that the jury's award of compensatory damages on the retaliatory discharge claim is the maximum amount Nelson can recover for all of her Title VII claims, it is unnecessary to reach the issues raised by RENEW concerning Nelson's sexual harassment claim. Specifically, even if we were to resolve these issues in RENEW's favor, it would not affect the compensatory damage award, which is limited to $100,000, and we could not provide any effectual relief. In addition, because Nelson remains a "prevailing party" under 42 U.S.C. § 2000e-5(k), we find it unnecessary to address RENEW's challenge to the court's award of attorney fees and costs, which is based only upon the argument that Nelson should not have prevailed on either claim and therefore no fees or costs should be awarded.

We reject Nelson's argument. "[W]hen a statute speaks with clarity to an issue[,] judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). Here, the clear and unambiguous language of § 1981a(b)(3) indicates the cap applies "for each complaining party," not to each claim. Thus, the court properly applied the cap ($100,000 in this case due to the number of persons employed by RENEW) to the aggregate damages awarded on both of Nelson's Title VII claims.

III.

The judgment is MODIFIED in part and AFFIRMED AS MODIFIED. Nelson's motion to strike RENEW's docketing statement is DENIED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

JEANETTE NELSON, Plaintiff, v. REHABILITATION ENTERPRISES OF NORTH EASTERN WYOMING, INC., and TERRY O'GORMAN, Defendant.	)	NO. 95-CV-38-B

JUDGMENT

(Filed Jun. 28, 1996)

This action was tried before a jury and the Court, with the Honorable Clarence Brimmer, Judge, presiding.

The jury found that RENEW was liable to Nelson for her hostile work environment claim and awarded her $90,000 for this claim. The jury also found that RENEW was liable to Nelson for her retaliatory discharge claim and awarded her $100,000 for this claim. Thus, the jury's aggregate award to Nelson was $190,000.

The parties have stipulated that RENEW had between 150 and 200 employees. Under the 1991 amendments to Title VII, general compensatory damages are capped at $100,000 for employers with more than 100 but fewer than 201 employees. 42 U.S.C. § 1981a(b)(3)(B).

Nelson asserts that the cap applies to each of her Title VII claims separately, and that she therefore is entitled to

the entire $190,000. The Court cannot agree. The language of the statute is clear, and it caps damages "for each complaining party," not for "each claim." The statute provides:

> The sum of the amount of compensatory damages awarded under this section . . . shall not exceed, *for each complaining party* – . . . [$100,000] in the case of a respondent who has more than 100 and fewer than 201 employees. . . .

42 U.S.C. § 1981a(b)(3)(B) (emphasis added); *cf. Emmel v. Coca-Cola Bottling*, 904 F. Supp. 723, 750 (N.D. Ill. 1995); *Hogan v. Bangor and Aroostook Ry. Co.*, 61 F.3d 1034, 1037 (1st Cir. 1995); *Solomon v. Godwin and Carlton*, 898 F. Supp. 415, 416-17 (N.D. Tex. 1995).

For this reason, the Court reduces Nelson's aggregate award to $100,000, plus any backpay that the jury awarded her. Nelson asked for backpay, and the jury was instructed on backpay. Nelson's evidence supports a jury finding that Nelson is entitled to two years of backpay at an annual salary of $19,500. The Court thus finds that the jury awarded Nelson a total of $39,000 in backpay. Because this amount is not subject to the damages cap, it is added to Nelson's $100,000 compensatory damages award.

Finally, the jury found that O'Gorman is not liable to Nelson for her intentional infliction of emotional distress claim.

Therefore, it is ORDERED and ADJUDGED that Nelson take $139,000 from defendant RENEW, and take nothing from defendant O'Gorman.

Dated this 28th day of June, 1996.

/s/ Clarence Brimmer
UNITED STATES
DISTRICT JUDGE